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ABA General Practice, Solo & Small Firm Section

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eNewsletter for the General Practice, Solo & Small Firm Section

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[A Law Firm Brand Identity Isn't All Form and No Substance](#)

What is a brand identity? It is a way of communicating about your firm that helps your target audience understand and remember more about your firm. It must build upon your firm's strengths and core message. Your brand isn't just your logo and typeface: It's the personality of your firm, from the substantive focus of your practice to the way you treat your existing clients.

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Fragile as reason is and limited as law is as the institutionalised medium of reason, that's all we have between us and the tyranny of mere will and the cruelty of unbridled, undisciplined feelings.

—**Felix Frankfurter** (1882–1965)

Practice Tip

Focus on Just One Important Matter at a Time

One reason so few of us reach our goals is that we never direct our focus. Concentrated work can lead to greater work-life happiness. Focusing our efforts on fewer activities at a time can help us reach long-term goals.

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Volume 3, Number 3 • August 2005

Better at 48 Than 68

By Joseph G. Murray



As practicing lawyers, we are each acquainted with at least one lawyer who knows that he or she should be doing something else in life rather than practicing law, but the change is always postponed. We also know at least one lawyer who is so incredibly unhappy practicing law that he or she should be doing *anything but* practicing law.

And then there is me. I was generally satisfied as a consumer debtors' lawyer. I enjoyed the litigation, and I enjoyed teaching other lawyers, but then the outside world crept in. And the outside world included Judaism.

The chronology still strikes me. In 1995, at 40 years old, I stepped into a synagogue for the first time. I converted to Judaism three years later, and my bar mitzvah was in 2000. In 2002, I visited Israel for the first time. While there, I knew I would return.

I applied to the rabbinical school of the Reform movement later that year and was accepted in March 2003, conditioned upon my retaking a Hebrew proficiency examination. This was no easy task. Hebrew hadn't come up often in my childhood in Appalachia, especially in an Irish Catholic household in which every brother was expected to be an altar boy. I learned in May of 2003 that I had passed the examination, and in July I landed in Jerusalem, Israel, to begin my first year of rabbinical school.

Most of my classmates were half my age, and none of them had converted to Judaism as an adult. However, all of them were bright and interesting, and committed to becoming rabbis, cantors, or Jewish educators.

The year in Israel was surely my most formative year as an adult; yet it flew by, as did the second year of school in New York City, a year that just ended this past May.

This August, the third of five years of education will begin. How am I spending the summer of 2005? I am employed by a bankruptcy trustee with no shortage of litigation.

Do I miss practicing law on a full-time basis? Yes. I miss the writing, the advocacy, and the contacts with clients. Most of all, I miss the sense of accomplishment that one rarely feels in the classroom.

It goes without saying that not every son of an Irish Catholic household of thirteen children makes it to rabbinical school. However, two summers of practicing law, after twenty years of practicing law, have convinced me that the single largest obstacle to my becoming a rabbi was never my family or my childhood, but rather that I had first become a lawyer.

Admittedly, when I was admitted to rabbinical school, I had a secret weapon: a spouse with whom I had practiced law and who would cover for me while I exited a busy litigation practice on short notice. There is no doubt that without her, I could not have begun school. But even with this secret weapon, I had to make a decision to leave the law in the first place; in effect, I had to look at my colleagues and say, "What you and I do for a living just isn't for me anymore. Although there's nothing more important to you, there's something much more important to me." The explanations to some family and friends were even more difficult, because they were aware of the personal sacrifices required to become a student at age 48.

At least one person reading this story has seriously considered doing something else with his or her life. Before you procrastinate further, or allow a colleague to procrastinate further, please consider a question I was asked while interviewing for rabbinical school. The question, put to me in a room full of rabbis and other Jewish professionals, was as follows: "Mr. Murray, you seemed to have figured out an awful lot in the last few years, but if we admit you, you will be 48 years old when you begin your studies in Jerusalem. Don't you wish you'd figured all of it out at age 28 instead of 48?"

My response, which put an end to the questions about age, was "It is better to figure it all out at age 48 than at age 68."

For many practitioners whose lives should move in a different direction, the obstacle isn't figuring anything out as much as it is doing something about it. If you are one of those who have considered change, do not look for it to be any easier at age 48 than it would have been at age 28. And if you are already 68, and you feel your time to move in a different direction has long since passed, remember my story the next time you are having a conversation with a practitioner, whether happy or unhappy, whether 28 or 48, who should be doing something else. Remind him or her that age 68 is right around the corner.

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Reintroducing the Ethical Will: Expanding the Lawyer's Toolbox

By Scott E. Friedman and Dr. Alan G. Weinstein

Perhaps the best known of all legal documents is the will—the instrument by which individuals direct how and to whom their assets are to be transferred upon their death.

Often in consultation with other professionals such as accountants and financial planners, both general practitioners and estate planning specialists devote much or all of their professional time and resources to assisting their clients prepare their wills and ancillary documents in contemplation of wisely and efficiently transferring their wealth.



Notwithstanding the often considerable time spent in the estate planning process, too many people fail to even consider, much less plan for, the transfer of wisdom, insight, experience, and similarly related intangibles. This failure results in an unnecessary loss of real value to families, friends, and communities. Parents, particularly as they age, find themselves wondering who will offer advice and guidance to their children after their demise. Children who have lost their parents are often left wondering what advice “mom or dad would have given.” The transfer of these intangibles may provide families and friends with a continuity and sense of purpose that traditional wills do not.

Historically, professional advisors have too often neglected the opportunity to counsel their clients with respect to the transfer of wealth in the form of wisdom and insight. The time is now for that omission to be rectified. Lawyers can offer at least a partial solution to the foregoing problem by introducing their clients to an ancient, but little-publicized, tool known as an “ethical will.”

What Is an Ethical Will?

Because it is a uniquely personal document, it is difficult to precisely define what is meant by the term *ethical will*. As a general proposition, it is a letter that is intended to share important values, lessons, and blessings to loved ones. Ethical wills are sometimes used to ask for forgiveness or to forgive someone else. An ethical will might even contain burial instructions or, as one of the authors recently experienced, instructions to forego a traditional burial service in lieu of a party. It can be written to family members, friends, and even organizations.

Perhaps the oldest known example of an ethical will is found in the Hebrew Bible, where Jacob's blessings to his sons are recited in Genesis Chapter 49. The Christian Bible also contains references to ethical wills (John Ch. 15–18). Although some ethical wills continue to be transmitted orally, the modern ethical will is most typically prepared as a written letter. Because of wide access to new forms of technology, ethical wills are now being prepared on CDs and DVDs, with all the accompanying bells and whistles (video clips, photographs, sound bites, music, etc.). It is even possible to engage production companies for those interested in preparing a professional quality video. Whether simply written on the back of a napkin, or recorded with the most advanced technology, an ethical will represents one of the surest tools available to transfer wisdom, values, and expressions of feelings.

Contents of an Ethical Will

Mostly conceived of as a vehicle for expressing deeply held personal or family values, visions, and beliefs gleaned from a lifetime of learning and experiences, there is almost no limit to the amount or type of information that can be included in an ethical will. Contents might include insights into happiness, business success, and dealing with difficult times and difficult people. Historical information that might otherwise be forever lost can be transmitted. For example, the circumstance surrounding meeting a spouse, delivery of a child, overcoming adversity, or the memories from a particular trip or moment of time. Recounting major lifetime decisions, and the purposes underlying those decisions, might also be included. Recommendations about favorite books, songs, or movies might be important for some to share for posterity.

In helping our clients prepare their ethical wills, we ask them consider a wide variety of subjects for possible inclusion. For example, in addition to the subjects referred to in the preceding paragraph, we ask our clients to consider including thoughts on the following:

1. A statement of values and examples of how they were used to help make difficult decisions.
2. Lessons from loved ones, including parents, spouse, children and friends.
3. Hopes for the future.
4. Advice.
5. Important events in life.
6. Expressions of love, gratitude, appreciation, and forgiveness.
7. Favorite books, movies, songs, quotations, and places to visit.

In our experience, we have found that those who take the time to prepare an ethical will not only discover a unique way to share important gifts with their loved ones, but they also learn something very important along the way about themselves. The experience of working on the ethical will has, in our experience, been a universally positive emotional experience for our clients, providing an often-unexpected sense of clarity (as to what is most important to a person) as well as a sense of “completion,” particularly as a parent. For many, it is clear that the gifts transmitted in an ethical will are far more important than anything transferred in their legal will.

Adjunct to a Succession Plan

The pressing need for a more holistic approach to estate planning finds particular relevance with respect to family owned businesses. The unique challenges facing family businesses are as well known as their high statistical failure rate. (See, e.g., S. Friedman, *The Successful Family Business* (Dearborn Publishing Group, Inc. 1998)). Many lawyers have watched helplessly as their family business clients unravel and implode following the demise of their founder. In the storm of controversy and resulting despair, the refrain among survivors is as predictable as the sun rising in the east: “What would Dad [Mom] have wanted?” Without the benefit of clear guidance, each child freely interprets the wishes of the deceased parent. As a result, offspring often bicker and seek to promote their own self-interest to the detriment of the family business and family relationships.

In contemplating the scale and variety of intrafamily conflict we have worked through over the years, we have come to the conclusion that many such conflicts are, in part, attributable to the death of a leader who had not thought to clearly transfer his or her intentions, wishes, and wisdom to the surviving family members. Lacking direction and the benefits gleaned from a legacy of insight and wishes passed on by the patriarch or matriarch, surviving children often become absorbed in the negative emotions of selfishness, resentment, and jealousy, which all inevitably leads to trouble for the business.

Although practitioners have become increasingly aware of a number of strategies to assist families in business together (e.g., family council, code of conduct, family constitution, etc.), an ethical will is a wonderfully complimentary tool that, in conjunction with other strategies, can play a role in intentionally seeking to create and reinforce a higher level of cooperation and trust among family or group members who often struggle in the vacuum created by a leader’s passing.

Although traditional estate or succession plans might detail the mechanics pursuant to which ownership interests in a business are transferred, an ethical will can explain why the interests are being transferred in a particular way. The ethical will could also outline how its author hopes

future decisions regarding the company's operations might be made in order to build collaboration and family unity. In short, an ethical will can be used by a senior member of the family business who seeks to (1) share his or her intentions with regard to leadership, succession, ownership, and governance of the family business; and (2) provide a moral compass that permits the leader to transmit his or her insights and wisdom to the next generation.

Collapse in a Family Business

Not long ago, one of us counseled a company that underwent a management transition when the patriarch died suddenly. Three sons and two daughters worked in the business, which the father had ruled with an iron fist. The father loved his children and had always planned for them to take over the business upon his retirement. Unfortunately, his unexpected death left the family unprepared for a smooth succession of business leadership.

The mother, who inherited legal ownership of the business, did her best to keep peace in the family, but the children bickered. The sons, who already had stronger leadership roles in the business, convinced their mother to give them even more leadership responsibility. Ultimately, the family business broke apart, and the daughters left to start their own competing company. Holidays were never the same after that, and the mother passed away brokenhearted.

Without an ethical will to provide clear guidance of the father's intentions, the three sons were able to prevail upon their mother to grant them virtually unlimited authority to run the family business as they saw fit. The daughters felt their father's intentions were being violated and that all five siblings should have shared leadership and management of the family business equally. The daughters accused their mother of favoring her three sons.

The father's silence on leadership succession in this family business created a vacuum that allowed his children to focus on their own self-interest. His wishes and intentions as the founder died with him.

Sam Steinberg, founder of the Steinberg Supermarket chain of Montreal, Canada, was another family business leader who apparently failed to communicate clear expectations about how his company would operate after his death. In that family business, the lack of a clear succession plan—which might have been included in an ethical will—led to well-documented intrafamily discord and litigation. One company executive, commenting on the succession plan and implicitly recognizing the confusion over the founder's intentions, observed that after Steinberg's death, his daughter Mitzi and her husband “really took hold. *This must have been his desire.* If you get to be 70 and you haven't planned for the succession of the business, then this must be what you want. He knew he had a heart problem, and his brother died in his 50s. So ...” (See Sam Steinberg Case, Harvard Business School 9-392-061, rev. March 10, 1993. Italics added).

This executive's observations may have been accurate. But we can't help believing that Sam Steinberg's family would have been better off if his intentions had been explicitly spelled out and shared with his relatives and key company executives.

Such disasters occur every day in family businesses around the world. Sometimes, the leader's intentions were clear but never communicated to his survivors. Other times, the leader simply ignored the difficult planning decisions that inevitably arise. In either case, the surviving family members are left with little guidance about how to lead the company.

Guiding Principles

Paul Ciminelli, the CEO of Ciminelli Development Company, a successful family-owned real estate development business headquartered in Western New York, has written an ethical will. Ciminelli, a second-generation leader, says his main purpose in preparing this document is to help explain to his children how he has chosen to live his life. “I wanted to let my sons know what guided me through my life,” explains Ciminelli, a second-generation leader.

In his ethical will, Ciminelli expresses his values and core principles and explains the background behind some of the most important decisions he has made in his life. Not seeking to convince his children to mimic his decisions, he uses his life choices to set the stage for his children to better explore their own path. His ethical will discusses such subjects as the importance of finding balance in life, his relationship with his own father, and why he decided to pursue a career in his family business.

Although Ciminelli chose to enter the family firm, he makes it clear that his children need not feel obligated to do the same. If they want to join the business, he has set up ground rules that

specify education and outside business experience as prerequisites. His ethical will, he explains, gives him a reference point in transferring his values to his children. He wants to deal with his children as people, not just legal beneficiaries of material wealth. Ciminelli, a student of leadership and business, wants to transfer his most important lessons and experiences, not just a portfolio full of real estate projects, to his children.

Preparation Tips

Although there is no right or wrong way to prepare an ethical will, we offer a few recommendations based on our experiences. Traditionally, an ethical will is provided to its intended recipients upon the author's death. We believe a better approach is to review the document as a family while the author is still alive. This creates a better learning opportunity for the beneficiaries, who can ask questions and gain a sense of clarity and understanding.

As is done with traditional wills, it can be useful to update and edit the ethical will and perhaps add to it over the years as you continue to clarify your thoughts, knowledge, and insight. Ethical wills can be used throughout life to help clarify values and guiding principles: in a sense, something akin to an "ethical statement" (or statement of core values and principles). Such statements might be helpful to couples as they enter into marriage, to children upon the divorce of their parents, or at any other point where one feels inspired to share insight, experience, and wisdom.

Consider using communication options such as videotape, CD, or DVD. A statement that captures not just your words, but also your tone, emotions, and other intangibles can be extremely helpful to your beneficiaries. If your client likes to write poetry or songs, encourage him or her to include a poem, or lyrics of a song, in their ethical will. If an ethical will is written, consider using archival paper to ensure long-term survival.

Finally, we note that an ethical will, although potentially more valuable in many respects than a traditional will, should not be considered a legally enforceable instrument. If there are particular points that an author would like to make enforceable, such as a succession plan in a family business, include those points in other documents such as a legal will or shareholders agreement.

Sharing Your Wisdom

The oft-cited cliché tells us that it's better to teach a person how to fish than to give a person a fish. Education creates self-sufficiency; material gifts risk breeding dependency. Accepting that premise, we believe that a parent's insight, knowledge, and wisdom are the most important assets they can transfer to a child. Yet in the traditional will, lawyers and their clients traditionally limit their focus to how many fish (read: money and tangible assets) can be given away. The ethical will is a wonderful tool that all lawyers should become aware of and use in their professional practice to help their clients share insight and wisdom with children, friends, and favorite organizations.

In sum, we recommend that lawyers encourage their clients to write an ethical will. We believe it will lead to a higher likelihood of acceptance of the traditional will and reduce the potential for intra-family conflicts. Ethical wills may also provide a sense of intergenerational continuity by promoting a sense of legacy that bridges the generations of the past and those of the future.

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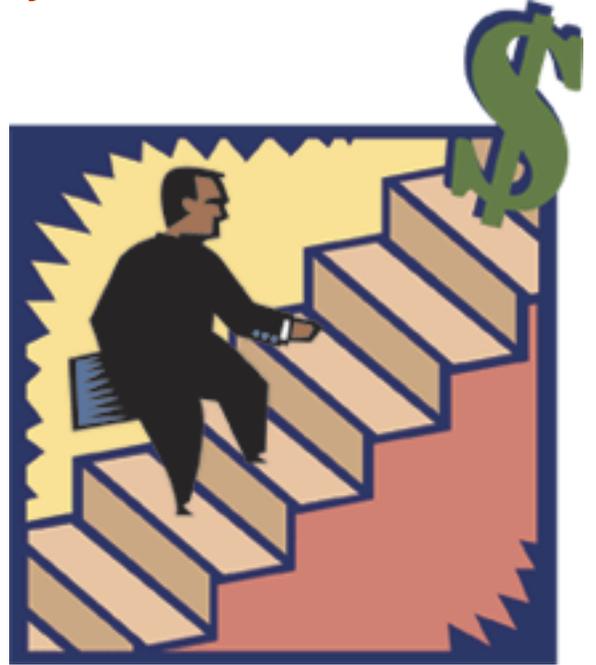
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Six Steps to Improve Your Practice Profitability

By David J. Bilinsky and Laura A. Calloway

There's no getting around it if you're a solo practitioner or a member of a small firm: You have to do the math. Larger firms often have full-time administrators, and megafirms have stables of financial pros to keep tabs on their business matters. As a small firm lawyer, you're the one who has to start crunching the numbers and making changes if you hope to improve your bottom line. But what numbers should you be looking at? What should you change? Here are six steps you can take to better understand—and improve—your practice's profitability.



One: Create a Business Plan

As Yogi Berra said, “You’ve got to be very careful if you don’t know where you’re going, because you might not get there.” Ergo, you need a business plan.

A business plan is your road map to the financial future. You can show it to banks, suppliers, or others you will need to deal with to demonstrate that you’ve done the homework necessary to launch your practice or to move to the next level. A sound business plan is an organized explanation of where you mean to go and how you intend to get there. All successful businesses are planned on paper well before the doors actually open. But even if you’ve been in business for many years, it’s not too late to draw up a business plan. And it’s a great way to refocus and revitalize a practice that has lost its way over the years and is wandering in the wilderness.

A business plan can be as simple or as detailed as you wish, but it always needs to contain four essential elements:

1. A general description of your business, including the services you intend to provide and the markets you intend to serve
2. Your financial plan, including a budget detailing anticipated revenues and expenses
3. Your management plan, with a description of how you will set up your office and support the delivery of your legal services
4. Your marketing plan, showing how you intend to keep existing clients and reach new ones

Be as precise as possible when drafting the financial part of your plan, including your budget. The care and forethought you put into correctly anticipating future income and expenses can spell the difference between success and failure for your practice.

You should prepare a detailed, month-by-month budget for at least the initial 12-month period. Include all known or anticipated expenses, and when they will come due. Factor in an additional amount for unexpected expenses (from 10 to 20 percent is a safe bet), because it is Murphy’s Law that costs will always be greater than you expect, particularly as the volume of work increases. Build in marketing time and expenses as well. And don’t forget to include your draw. After all, if you don’t look after yourself, no one else will.

If you already have an earnings track record, look back through historical data to spot trends and seasonal fluctuations. If you’re just starting out, you can still make an educated estimate based on your marketing plan. Use a conservative estimate of how much business you will initially attract. Then, compare your estimated income and outgo on a month-by-month basis. If you show negative cash flow for several months in a row, will you still have the funds on hand to

meet your needs? If not, where will the funds come from?

Once you've set out well-defined income and expense targets, you will be able to judge whether you're meeting, exceeding, or falling behind your goals. Review the goals you've set on an ongoing and regular basis. If you find yourself failing to hit your target, take corrective action by cutting unnecessary expenses and thinking strategically about potential new business—before it's too late. If you ignore the initial signs of trouble, you may find that you are quickly out of business, and possibly facing even greater debt than when you started.

Two: Implement a Financial Reporting System

After developing your business plan, you need to implement a system that can deliver the financial information—in the form of sufficiently detailed and timely reports—necessary to determine whether you are meeting your business targets. At a minimum, the report system should include the following:

- A statement comparing actual income and expense numbers against your budget, for both the current month and the year to date.
- A statement showing worked but unbilled hours (WIP) for every lawyer, for both the current month and the year to date. It should also compare the actual WIP against the expected level of WIP.
- A statement showing actual billings by lawyer for the current month and the year to date. It should also show the expected level of billings and whether each lawyer is above or below expectations.
- A statement showing collections by lawyer for the current month and the year to date. It should also show write-offs and write-downs and compare actual collections against budgeted amounts.
- A statement showing aged accounts receivable by lawyer, by client and by practice area.
- A statement showing unbilled disbursements by file and comparing them to the previous month to show whether they are increasing or decreasing.
- A statement showing funds in trust by client and whether those funds are retainers or cost deposits held on behalf of clients.
- A statement of upcoming trials and motions that compares the expense and retainer funds in trust for each client against expected costs and fees for the courtroom work.

Three: Scrutinize Your Cash Flow

Although accountants encourage accrual-basis bookkeeping as a way to examine whether billable hours are finding their way to the bottom line, in the real world your firm will still live or die by its cash flow. Accordingly, your accounting system has to forecast cash flow needs and compare them with expected cash inflows. Any excess cash can be returned to the lawyers as bonuses or reinvested in the practice. Any cash shortages must be covered either by the lawyers (by way of lowered draws or capital contributions) or by increasing the firm's debt (usually by increasing the line of credit).

Although occasional short-term cash shortages can usually be covered, long-term chronic cash deficits usually herald the undoing of a firm. Simply increasing firm WIP can drive you to ruin unless you are also converting that WIP to cash. A law firm's objective is not just to perform legal work, but also to change that intellectual effort into cash. A cash flow statement ensures that this is being done at a rate sufficient to keep the business afloat.

One cash flow item many lawyers fail to monitor and anticipate is taxes. Whether it's monthly withholding taxes for your employees or quarterly self-employment withholdings for yourself, these items come around regularly. They need to be part of your routine, budgeted expenses, with the money to pay them regularly set aside before other distributions are made.

Four: Track Your Time

Many lawyers do not track their time. They give various reasons, the three most common being: "I only handle matters on a contingency basis, so the hours I put in don't really matter," or "Tracking billable hours just takes away from the time that I can be doing legal work for clients," or "All that really counts around here is the amount of money that you bring in every month, not the number of hours you work."

What these lawyers are really saying is, "Keeping up with my hours is a bother, and I can't be bothered!" They are obviously missing the point if they want to improve their individual financial performance. For the individual lawyer, financial performance really comes down to two measures:

1. Effective hourly rate (EHR)
2. Total billings

Here's why.

You determine your effective hourly rate on a file by taking your fees billed and dividing them by the total hours put into a client's file (not just the hours billed but all the time worked, whether billed or not). When you measure the EHR for all your files and rank the results from largest to smallest, you can see which clients and files generate high dollars for the effort involved and which are low contributors. This is a quality indicator—telling you which cases and clients result in high returns and what type of cases and clients you should be seeking to acquire more of in your practice.

After you've determined your EHR, calculate total collections per lawyer, per file, per month. This is a quantity indicator, and the usual metric used by lawyers. When you look at total collections, you have an indication of which files generate large bottom-line results.

Now—to work smarter and not harder—concentrate on clients and case types that are at the top of the list for both EHR and total collections.

Five: Reduce Steps and Increase Work Flow

Look to automation to increase your efficiencies. There are many software products and technological gadgets available for legal professionals. As an example, one of the most fruitful products for enhancing workflow is practice management software (such as Amicus Attorney, Time Matters, PCLaw, ProLaw, and PracticeMaster). However, just having the software doesn't necessarily boost the bottom line. You need to integrate the products with your office procedures, and with each other, to reduce costs and increase efficiencies.

One obvious way to increase your workflow is to integrate your accounting system with your practice management application. Many small firms still don't have automated time and billing systems. Or, if they do use software, they use one product for timekeeping, a second for contacts maintenance and a third, unrelated, product for calendaring and docketing. Often these products are on separate computers that aren't linked through an office network and, consequently, can't share information. A secretary or the lawyer must enter a new client's data in the contact management software, then pass the intake sheet or paper file over to the bookkeeper, who has to reenter the same information into the billing program on another computer.

Think of the savings in time and effort achieved when that information can be entered—and updated—by one person, in one place, and everyone in the office can share it. Plus, integrating your accounting system with your practice management software will also allow you to post your time and billing data directly into your accounting system from your computer as you work—doing away with paper timesheets.

If you're not sure whether the purchase of a particular program can help your bottom line, you can evaluate your expected benefits from the technology by doing a return on investment (ROI) analysis. To illustrate, here is how you can quantify some of the efficiency gains that you can realize from the implementation of case management software.

Most firms employ at least a part-time bookkeeper to do time postings. For this example, let's assume that time and billing entries take 40 percent of the bookkeeper's time; that she is paid \$35 per hour, including benefits; and that she comes in two days per week. You're thinking about purchasing a case management system and integrating it with your accounting system, but at \$5,000 the price seems steep and you don't know whether it would be a cost-effective move.

Your savings by implementing this aspect of practice management would be:

$$8 \text{ hours} \times 2 \text{ days} \times 40\% \times \$35 \times 52 \text{ (weeks)} = \$11,648$$

Your ROI would be:

$$(\$11,648 \text{ [savings]} - \$5,000 \text{ [cost]}) - \$5,000 \text{ [cost]} = 133\%$$

Looked at another way, you would recoup the program cost in approximately nine weeks, considering just the savings in bookkeeper costs. (Of course, this analysis assumes that you cut back on your bookkeeper's hours as a result!)

In addition, case management applications allow you to link together all communications on a particular matter, whether they be word processing documents, telephone notes, or e-mail sent and received, and to group them all in one place. Add a scanner to turn hard-copy pleadings and correspondence you receive into digital form, and you can set up a virtual file for each matter you're working on. Then, when you receive a phone call from the client or opposing attorney, you don't have to scramble around looking for the file. You just click on the client name, select the

matter, and view any document or other information you need.

Let's assume that you spend an average of a half hour each day going out of your office to look for files or documents in order to return phone calls. Let's also assume that this half hour is not "billable," because you aren't actually doing any productive work for your clients during these searches. What is your ROI if you could save this wasted time?

If your billable hourly rate is \$100 per hour and you work an average of 231 billable days each year, your increased billable time is:

$$.5 \text{ hour} \times \$100 \times 231 \text{ days} = \$11,500$$

That's your savings per year just by avoiding the search for files!

Even if implementing the practice management product requires your firm to incur hardware, software, and training costs of \$5,000 per timekeeper (for computer upgrades, network upgrades, software purchases and the like), your payback period on the cost would be:

$$\$5,000 \text{ [cost]} - \$11,500 \text{ [savings]} \times 365 \text{ days} = 159 \text{ days per timekeeper (less than six months)}$$

to recover your monetary investment

As you can see, solos and small firms can realize a substantial return on investment by taking advantage of improvements in workflow.

Six: Reward the Behavior You Want to Encourage

Scientists have long known that the subjects of experiments, whether they be lab rats or lawyers, repeat behavior that is rewarded and avoid that which is not. Accordingly, if you want your firm to move toward certain goals, you need to make sure that your compensation system is designed in a way that (1) rewards the behaviors that will help you reach those goals, and (2) discourages activities that are counterproductive.

Law firm compensation systems, whether intentionally or unintentionally, generally reward one or more of the following items:

- Production of work
- Rainmaking
- Referring clients within the firm
- Superior client service
- Effective delegation of work
- Meeting or exceeding budgeted revenues
- Meeting or falling below budgeted expenses
- Mentoring, managing, and supervising associates and staff
- Firm leadership and business planning
- Seniority
- Capital investment, ownership, and risk
- Participating in community, bar, and pro bono activities

Regardless of how you decide to divide the pie, look at your stated business goals, and then check whether your compensation system promotes those goals or actually encourages the firm's lawyers to disregard, or actively work against, them. For example, what if you are trying to encourage your lawyers to refer more business within the firm, but each lawyer is paid based solely on the number of hours he or she bills? You won't see many clients being referred. There's absolutely no incentive to remove the nose from the grindstone to engage in cross-marketing activities.

Share the Numbers and Increase the Sum

Approving the bottom line isn't just a result of working harder. There are ways to increase the cash in your pocket that do not involve more billable hours. However, they do involve looking at your practice—including understanding the numbers that underlie it and what those numbers reveal.

Once you know and understand the financial underpinnings of your practice, you can start pulling levers that connect to profitability factors, resulting in an increase in net income. And once you can demonstrate the greater cash flow that will result from your proposed changes, other firm members as well as staff can see what's in it for them, too.

“Six Steps to Improve Your Practice” by David J. Bilinsky and Laura A. Calloway was previously published in Law Practice Magazine, Volume 30, No. 8, November/December 2004. Copyright © 2004 by the American Bar Association. Reprinted by Permission.

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Thinking Like a Lawyer

By Cheryl Tennant Humes



Anyone who has ever attended law school is familiar with the maxim that law school teaches students “how to think like a lawyer.” This statement is usually accompanied by an attendant warning that once one does learn how to think like a lawyer it is virtually impossible to turn that type of thinking off on those occasions when one would rather think like a normal human being. Thinking like a lawyer has meant that, at least for me, instant analyses of everyday situations for potential liability and possible causes of action to litigate leap involuntarily and somewhat distressingly to mind. (For instance, a few months into law school I attended an event at a well-known theater in Philadelphia where a silk rope used to cordon off certain sections of the balcony was *unhooked and lying loose. Across the stairs!* Instinctively, I ran through the standard checklist of tort elements.) This phenomenon is not as bothersome as one might expect, because “thinking like a lawyer” can become a useful way of analyzing any problems or issues that may arise.

Recently while attending a public legislative hearing, I became aware of having added another type of “lawyerly” analysis in addition to the traditional sort described above. In March of this year, nine legislators from the Pennsylvania House of Representatives introduced a bill that would allow intelligent design to be taught alongside the theory of evolution in public school science classes across the state, a controversial and currently heavily debated issue across the nation. During the hearing held by the House Subcommittee on Education, lawyers, scientists, and philosophy professors on both sides presented testimony.

The testimony of the expert advocates of intelligent design focused on how ID meets the criteria of a legitimate scientific theory. They stated their belief that Darwinists’ opposition to ID is unfair and prejudicial to students who they believe are being deprived of exposure to a valid competing theory. On the other hand, their opponents contend that ID does not meet the requirements of a valid theory of science and that the proposed bill is a disguised and unconstitutional attempt to

inject religion into the science curriculum.

As the hearing progressed, I wondered how I might apply my recently acquired skills as a budding lawyer if I were directly involved, whether as someone giving testimony for one side or the other or as one of several legislators who were asking questions and guiding the discussion. I had the usual inclination to “think like a lawyer” in the traditional sense, of course. That is, as I listened, I found myself weighing the merits of the arguments, the relative credibility of the presenters based on their background credentials and their demeanor, and assessing who had the stronger argument. Not long ago this is probably where my analysis would have stopped; however, I also found myself contemplating other factors and dynamics of the dispute.

Applying mediation “thinking”—which occurred as involuntarily as “thinking like a lawyer” due to my enrollment in a skills class on mediation—it was easy for me to start identifying many explicit and implicit underlying issues of each side. Superficially, the position of each side is clear—one wants the bill to go forward so ID can be taught as science, and the other doesn’t; however, each of these outcomes is win/lose and will be entirely unsatisfactory to one of the contending groups. Is it possible that there are other options available that would avoid this all-or-nothing” result? What are the underlying interests of each side? Is compromise possible when the controversy is as emotionally charged as ID? (I understand that this issue is complicated and involves many underlying interests, both stated and unstated, and I will not go into a full analysis of all of the concerns here.)

I found myself imagining how the meeting would have proceeded had the participants, particularly the lawyers on each side or, even better, the legislators who were overseeing the hearing, applied some principles of mediation. Arguably, a legislative hearing is a very favorable forum in which to use mediation principles. The underlying interests of each side would be identified and clarified. Other ideas would be offered and options solicited for later evaluation.

Interestingly, a compromise had been offered by one side that slipped by unnoticed, or at least unremarked upon, by the other side and by the committee members. The ACLU representative stated that they had no objection to the teaching of intelligent design in public school, as long as it was taught in the context of a history or social studies class. The ACLU was recognizing and accommodating one of the interests of the opposition, namely their desire to expose public school students to intelligent design. They were taking a step toward a creative solution by opening the door to a possible compromise that, while it may not be fully satisfying to each group, could at least be the beginning of a discussion of other options. Unfortunately, there is no way to know if this proposal would have been considered, let alone accepted, by the supporters of ID. The suggestion went no further than the original statement by the ACLU.

Would a mediation approach diminish the original “lawyerly” analysis? By thinking like a mediator I was not thinking any less like a lawyer, but arguably more so. In fact, an examination of the strengths and weaknesses of both sides of a dispute and the legal issues raised by the facts are necessary components to mediation. Incorporating mediation methods in discussing this dispute would not have weakened the positions of either side.

Cheryl Tennant Humes is a student at Widener University School of Law in Harrisburg, Pennsylvania, and works as a legal intern for Attorney William G. Schwab & Associates in Carbon County, Pennsylvania.

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The Self-Made Lawyer

By Travis Trueblood

A few years ago I left the comfort of big firm life to stake claim to my piece of American opportunity. I have not looked back since.

That is not to say that I did it on my own. I was fortunate to have the support and guidance of mentors and family in making the transition. Since my initial transition, the General Practice, Solo and Small Firm Section of the American Bar Association has been my largest support network.

Let GPSolo be part of the network that helps to insure your professional success.

At the ABA's Annual Meeting this coming August 4–9 in Chicago, GPSolo will continue to equip America's self-made lawyers with the tools they need. GPSolo will offer a full slate of continuing legal education programs dedicated to the solo and small firm practitioner.

Scheduled programs include:

- A Historical Retrial of the Haymarket Riots
- Clients—Finding Them, Keeping Them, and Serving Their Needs
- Estate Planning for Lesbian and Gay Couples
- Family Law Practical Skills Seminar
- Bankruptcy 2005: Ethical Obligation in the Bankruptcy Court
- Mastering Voir Dire and Jury Selection: Gain an Edge in Questioning and Selecting Your Jury

America's solo and small firm practitioners are the backbone of the legal system. With the ever-increasing trend of the megafirm, it is comforting to know that the section has your back—keeping its lawyers well prepared and connected for the challenges of today and tomorrow. Get involved and reap the benefits!

Travis W. Trueblood, LL.M. is a solo practitioner in Miramar, Florida. His practice includes Native American affairs law, litigation, real estate, and agricultural law. He can be reached at ttrueblood@legalfeather.com.



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The Old Man's Words of Wisdom



By William G. Schwab

You are visiting the Land of Nothing to Do. There's nothing to see here. I don't know what you are going to do for three days on your own in northeastern North Dakota. That's what I heard when I took my 83-year-old mother to visit relatives in Grand Forks, North Dakota. What I found was that this statement was anything but true.

I had never traveled to that part of the United States before. As an easterner from a small, rural Pennsylvania town, the image I had was flat wheat fields that would be followed by flat wheat fields with nothing in between. What I found was that nature was abundant from the marshy fields where ducks nested to the elk seen in the wooded areas near Devil's Lake.

Two things remain with me. The first is my visit to a small town, named Niagara, with a population of 57. It is along the Old Totten Trail, where the Native Americans and the settlers worked together to create a trail so mail could be brought to all reaches of Montana in the early days of our nation. The town hasn't forgotten its heritage, and where the dirt roads intersect in the heart of the town near the grain elevator and the railroad tracks, this small town has erected a small museum around its old school house.

Down the road a piece, there was Fort Totten, North Dakota, named after a fort that was built on the site. Constructed as a military post, it became an Indian boarding school, Indian health care facility, and a reservation school. It has 17 buildings open where one can view how our forefathers out west lived.

Why do I mention them? We are all creatures of history and history's influence on us. These two small towns seemed to have remembered this. Here I was in the Land of Nothing to Do, but I had the time and the opportunity to reflect on our nation and its heritage.



The Niagara School

We are a nation of laws, but more so we are a nation of our history. Get away from the big cities into the heartlands, and nearly everyone owns a gun. It's not to harm or maim another person, but is a vibrant part of daily life. Hunting is a pastime that is passed down from generation to generation. Got a snake or groundhog problem? Shoot it with your shotgun. Perhaps this is why when gun control is proposed, there is a loud outcry from rural America. Guns are viewed differently, because throughout rural America's history they have been a part of daily life that made living easier. History dictates one's perspective on this issue.

Similarly, the same is true with politics and the red-blue states. Simplistically, the red states traditionally represent smaller towns and rural areas, where historically neighbor helped neighbor. Government did not function or try to take over the role of what your neighbor just did because he was your neighbor. Government is not needed to interfere with normal life ways. Simply stated, the blue states represent large metropolitan areas where this neighbor-to-

neighbor contact is lacking. Government is looked upon as being responsible to fill needs that in rural America your neighbor would meet. Yes, there are exceptions to everything, and this is not a philosophical debate of right or wrong, but rather a simple observation.

Now as we look at sides of legal issues or cases that confront us, it may help to look at the parties' history and where they come from to better understand your client and the opposing side and even perhaps the judge!

—*William G. Schwab, now learning the law for more than 27 years*

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Trivia

Question:

Who was the first justice to wear trousers under his robe?

Answer:

Roger B. Taney

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Advocational Vocab

Test your vocabulary.

Do you notice the differences among the following?

| | |
|----------------|---------------------|
| allowed | perquisite |
| aloud | prerequisite |



Answers:

| | |
|--------------------------------|---|
| allowed —(v.) permitted | perquisite —(n.) privilege |
| aloud —(adv.) audibly | prerequisite —(n.) a preliminary requirement |

Now test your friends and colleagues.

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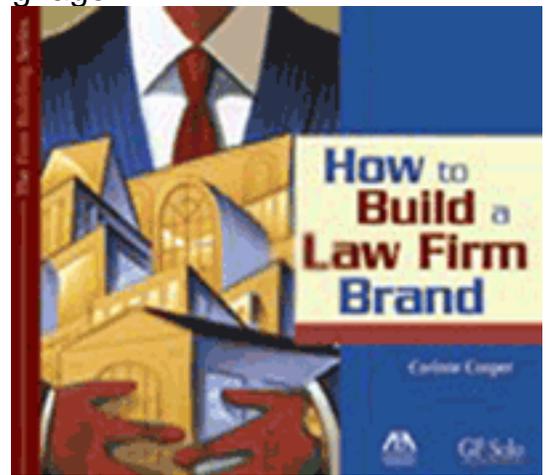
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Law Firm Brand Identity Isn't All Form and No Substance

Once you develop a brand, the next question is where to use it. The simple answer is, everywhere. At a minimum, this list should include:

- Business cards
- Rate or service information cards
- Letterhead
- Invoices and statements
- Note cards
- Packaging, including envelopes, mailing labels, and even stamps
- Website, including the URL
- Signage, including building lobby and office reception signage
- PowerPoint presentations
- Deliverables, including firm brochures and client information sheets
- Corporate gifts
- Advertising, including Yellow Pages ads

From the e-book *How to Build a Law Firm Brand*.
General Practice, Solo and Small Firm Section
By Corinne Cooper



[Click here to learn more or purchase this book](#)

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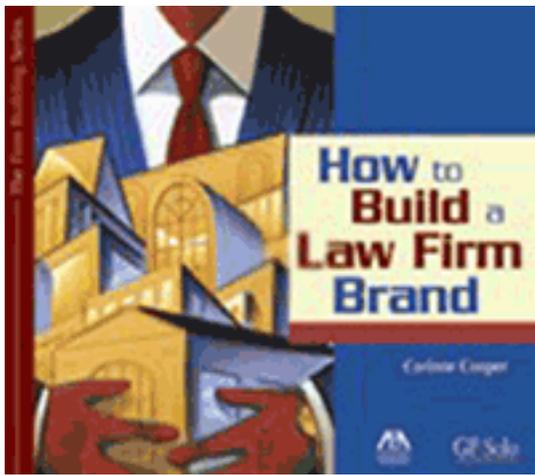
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Section News:

New! E-Book Release!

[How to Build a Law Firm Brand](#)



Your brand isn't just your logo: it's the personality of your firm—from the substantive focus of your practice to the way you treat your existing clients.

(e-book, pdf download, 23 pages)

\$19.99 Regular

\$14.99 GP Members

[Find out more about this e-book](#)

Find out more about a special deal when you [order this e-book with the forthcoming paperback, How to Capture and Keep Clients.](#)

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Member Survey- CLE Topics

We Need To Hear From You!

The GP|Solo Section is looking to provide additional benefits to solo and small firm practitioners. As such, we are in the process of preparing numerous teleconference CLEs for you to attend. What topics would you be interested in hearing? How long would you like the CLE to last? If we were to charge \$85.00 per registrant for a 90-minute CLE, would that be an acceptable cost to you?

[Please let us know what you think.](#)

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